

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: July 14, 2004

Division: County Attorney

AGENDA ITEM WORDING: Clarification and direction to County staff regarding Shrimp Road as follows:

Direct County Attorney's office to record Bernstein deed.

Direct Public Works to make necessary repairs to, and maintain as needed, the extended portion of Shrimp Road as described in the legal descriptions to 3 tracts, more particularly described in Exhibit A, attached hereto.

ITEM BACKGROUND: On February 11, 2000, the Circuit Court ordered Monroe County to make all necessary & reasonable inspections, modifications and maintenance to ensure proper drainage on Shrimp Road. A copy of the judgment on Count I is attached as Exhibit B. Pursuant to said order & subsequent Resolution No. 084-2002, a copy of which is attached as Exhibit C, Public Works has made repairs and maintenance to that portion of Shrimp Road which lies immediately adjacent to Bernstein Park. The referenced resolution provides for the County to take over repairs and maintenance of all of Shrimp Road upon the occurrence of a number of events, including receipt of all applicable deeds and/or easements. Inasmuch as the Bernstein's executed the deed to the dominant portion of the remainder of Shrimp Road over a year ago, this action will allow the road to be repaired and maintained for the benefit of the public.

PREVIOUS RELEVANT BOCC ACTION:

Adopted res. 84-2002.

CONTRACT/AGREEMENT CHANGES:

N/A

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: Unknown

BUDGETED: Yes ☐ No ☒

COST TO COUNTY: Unknown

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes ☐ No ☐ **AMOUNT PER MONTH** _____ **Year** _____

APPROVED BY: County Atty _____ OMB/Purchasing _____ Risk Management _____

DIVISION DIRECTOR APPROVAL:

John R. Collins 07/01/04
J. R. Collins

DOCUMENTATION: Included ☐ To Follow ☐ Not Required ☐

AGENDA ITEM # S-7

EXHIBIT A

The following legal description describes two tracts of land to be conveyed to Monroe County for right-of-way purposes. These two tracts are more particularly described as follows:

Tract 1:

Commence at the northwest corner of Block 57 of McDonald's Plat of a part of Stock Island as recorded in Plat Book 1, Page 55 of the Public Records of Monroe County, Florida; thence coincident with the north line of Block 57 and the southerly right-of-way line of Fifth Avenue S 83°56' E, 470 feet; thence S 6°04' W, 238.00 feet to the Point of Beginning of Tract 1; thence S 6°04' W, 1079.71 feet; thence East, 30.17 feet; thence N 6°04' E, 1076.52 feet; thence N 83°56' W, 30.00 feet to the Point of Beginning, containing 32,345 square feet, more or less.

Tract 2:

Commence at the northwest corner of Block 57 of McDonald's Plat of a part of Stock Island as recorded in Plat Book 1, Page 55 of the Public Records of Monroe County, Florida; thence coincident with the north line of Block 57 and the southerly right-of-way line of Fifth Avenue S 83°56' E, 470.00 feet; thence S 6°04' W, 1317.71 feet; thence East, 30.17 feet; thence S 6°04' W, 271.96 feet to the Point of Beginning; thence S 6°04' W, 655.78 feet; thence S 83°56' E, 1096.72 feet; thence N 6°04' E, 28.00 feet; thence N 83°56' W, 1003.01 feet to the point of curvature of a curve concave to the northeast, having as its elements a radius of 75 feet, a central angle of 88°03'56", and a chord bearing and distance of N 39°54'02" W, 104.26 feet; thence along the arc of said curve 115.28 feet to the point of tangency; thence N 4°07'56" E, 555.62 feet to the Point of Beginning, containing 38,477 square feet, more or less.

Tract 3:

The following legal description describes a strip of land on Stock Island for right-of-way purposes and is more particularly described as follows:

Commence at the northwest corner of Block 57 of McDonald's Plat of a part of Stock Island as recorded in Plat Book 1, Page 55 of the Public Records of Monroe County, Florida; thence coincident with the north line of Block 57 and the southerly right-of-way line of Fifth Avenue S 83°56' E, 470 feet; thence S 6°04' W, 1317.71 feet to the Point of Beginning; thence S 5°17'44" W, 924.63 feet; thence S 83°56' E, 17.56 feet; thence N 6°04' E, 927.73 feet; thence West, 30.17 feet to the Point of Beginning, containing 22,035 square feet, more or less.

EXHIBIT B

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

ROBBIE'S SAFE HARBOR
MARINE ENTERPRISES, INC.,

Plaintiff,

vs.

MONROE COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Defendant.

CASE NO. 95-379-CA-18
JUDGE SANDRA TAYLOR

RECEIVED
FEB 14 2000

FINAL JUDGMENT ON COUNT I

THIS CAUSE came on to be heard before the Court at Trial on November 1, 1999, and the Court, having heard argument of counsel, sworn testimony of witnesses, reviewed the file and the evidence presented, and being otherwise duly advised in the premises, the Court makes these findings of fact and reaches the following conclusions of law:

FINDINGS OF FACT

1. This is an action for injunctive relief and damages. The Trial was bifurcated and proceeded only with Count I for injunctive relief against the Defendant County.
2. Plaintiff is a Florida Corporation, doing business as Robbie's Marina, on Stock Island, Monroe County, Florida. Plaintiff's agent, Robbie Reckwerdt, presented testimony at trial.
3. Defendant, Monroe County, is a political subdivision of the State of Florida. Defendant's agent, David Koppel, testified as the engineer in charge.
4. Plaintiff owns certain real property on Stock Island, to which the Plaintiff has a non-exclusive easement for access across the road commonly referred to as Shrimp Road.

5. Defendant, Monroe County owns certain real property adjacent to a part of the easement held by Plaintiff, which is known as Bernstein Park.
6. The County established and developed Bernstein Park as a recreational park for the community in or about 1995.
7. The County Engineer, David Koppel, testified that in the course of constructing the park, the County constructed a swale to retain storm water on its property.
8. The Plaintiff, Robbie Reckwerdt, testified that storm water runoff on Shrimp Road has been impacted by the County's construction at the Bernstein Park and that the condition has worsened since the County's construction.
9. The County testified that in addition to Bernstein Park, it also acquired the first 238 ft. of Shrimp Road at the intersection of Fifth Avenue, subsequent to its April 1995 acquisition of Bernstein Park.
10. Sometime after October 1995, the County installed a drainage well on the Shrimp Road right-of-way, near the intersection with 5th Avenue.
11. The County Engineer testified that it graded and reconstructed the 238 ft. of Shrimp Road which was transferred to the County so that the elevations in the County's portion of Shrimp Road was lowered to allow water to run towards the well which was installed. The County also testified that the well which it installed was more than adequate to handle the storm water runoff from Shrimp Road.
12. The County Engineer testified further that after acquiring and constructing Bernstein Park, the County was under no obligation to build a drainage system to handling flooding on Shrimp Road.
13. However, the County did build a drainage well at the intersection of Shrimp and 5th Avenue,

and in addition to having to handle the runoff from the road and the adjacent properties, the County Engineer constructed a catch basin on Bernstein Park with a connection pipe to divert the water from the Park directly into the drainage well. This testimony was corroborated by the Roadway Drainage Improvement Plans and the Bernstein Park Plans which were entered as evidence.

14. The testimony of David Koppel at the trial was contradicted by his own previous deposition, wherein he had testified that all the water on Bernstein Park was handled on site, that the drainage well was intended only to handle the runoff from Shrimp Road.
15. The Plaintiff's expert witness, Paul Mitchell, testified that sound engineering practices would require that before a drainage well is designed and installed, that the engineer should determine what capacity well is necessary for the area and volume of water it is meant to handle. The County admitted that no such calculation was prepared before designing and installing this well.
16. The Plaintiff's expert also testified that the County had a duty, once notified of the problems by the Plaintiff, to determine whether or not the drainage system the County installed was functioning adequately. The County Engineer testified that there has never been any maintenance on the well since its construction, and that while he has gone out to look at it, he has never inspected the well itself to see if it is functioning properly, or at all.
17. The Plaintiff testified that the flooding on the road has caused a public safety hazard, that when the storm water floods Shrimp Road it becomes impassable as a two-lane road. Robbie substantiated his testimony with numerous photographs to this effect.
18. Furthermore, Robbie testified that particular area of Stock Island attracts many homeless people who are in danger when cars are forced off the road unexpectedly. Further, on the

evening of trial, after a day of light rain, this court made a court view of Shrimp Road, as agreed by the parties. The standing water was considerably deep in some areas of the road.

Apparently due to the poor condition of the road, every car coming in either direction moved to the middle of the road to avoid the standing water. Even at 7:30 p.m., after most, if not all of the businesses on Shrimp Road were closed, the traffic was brisk. There was also pedestrian traffic on the road. This court's observation was that the standing water created an inherently dangerous situation. This court made a second view, 24 hours later, and found a considerable amount of rainwater still standing on various parts of Shrimp Road.

19. The Plaintiff's expert also testified that the County had a duty, once notified of the problems by the Plaintiff, to determine whether or not the flooding was causing a danger to the public and to warn or protect the public from the known danger. The County Engineer could not demonstrate any measures that were taken to insure that the well, as installed, was functioning adequately.
20. Plaintiff seeks injunctive relief against Defendant County's activities which are a direct cause of immediate and irreparable harm and are not susceptible to cure and relief exclusively or adequately in the form of monetary damages and for an Order compelling the Defendant to remedy the flood conditions it has created.
21. The Defendants moved for a Directed Verdict at the close of the Plaintiff's case, relying on the defense of Sovereign Immunity, which the Court took under advisement, and proceeded to hear the defense present its case.
22. Both parties have submitted briefs on the sovereign immunity issue,

THEREFORE, IT IS

ORDERED AND ADJUDGED as follows:

A. The Defendant's Motion for Directed Verdict is **DENIED**;

B. The Defendant will make all necessary and reasonable inspections, modifications, and scheduled maintenance as needed to ensure the drainage system functions adequately on Shrimp Road in order to prevent a threat to public safety.

DONE AND ORDERED in Chambers in Key West, Monroe County, Florida on this 19th day of February, 2000.


SANDRA TAYLOR
Circuit Judge

Copies to:
Tracy J. Adams, Esquire
Suzanne A. Hutton, Esquire

EXHIBIT C

Commissioner Spehar

RESOLUTION NO. 084 -2002

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, ACCEPTING A PORTION OF SHRIMP ROAD AS A PUBLIC RIGHT-OF-WAY.

WHEREAS, in 1992, Monroe County purchased property on Stock Island to establish a public park; and

WHEREAS, said Park was dedicated in perpetuity as a park under the funding requirements for the Florida Recreational Development Assistance Program and the Land and Water Conservation Fund Program ; and

WHEREAS, Bernstein Park was developed on the site in or about 1995; and

WHEREAS, in 1995, the County obtained 238 feet of Shrimp Road intersecting with 5th Avenue; and

WHEREAS, Resolution No. 256-1995 accepted a corrective quit claim deed from Safe Harbor Enterprises, Inc. regarding said road and undertook improvement and maintenance of said roadbed for the use of the citizens of Monroe County; and

WHEREAS, the road is tantamount to a public facility by virtue of its furnishing further ingress and egress to areas remote from the Park but is also a primary access to the Park, even beyond the 238 feet which was previously acquired; and

WHEREAS, it has been determined that a portion of Old Shrimp Road was constructed on property owned by Safe Harbor Enterprises, Inc., and possibly the State of Florida which was not covered by the access easement previously granted to adjacent property owners; and

WHEREAS, there is a mediated settlement and Court Order whereby the existing access easement was conveyed to Safe Harbor Enterprises, Inc., in return for Safe Harbor Enterprises, Inc., deeding the property under the existing Shrimp Road to the public; and

WHEREAS, there is an existing lawsuit against the County regarding impacts which the park has had on Shrimp Road both the portion presently owned by the County and portions owned by Safe Harbor Enterprises, Inc.; now, therefore

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA that:

All of Shrimp Road as may be quit claimed to the County by the appropriate underlying fee owner(s) shall be accepted as a public right-of-way upon the meeting of the following conditions:

A) i) receipt of a quit claim deed from Safe Harbor Enterprises, Inc. or its affiliated corporation as may be the record owner of fee simple title to property underlying the constructed road; and

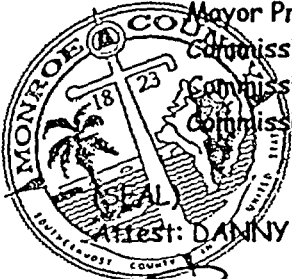
ii) the dismissal of the 16th Circuit Court Case No. 95-379-CA-18.

B) If it is determined that the State of Florida or one of its subdivisions or agencies, or any other entity owns any of the fee simple title for any portion of Shrimp Road, this acceptance becomes effective as to such portion(s) only upon receipt of a quit claim deed or an easement and dedication to the public from the owner(s) of record.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the 13th day of February, 2002.

Mayor Charles McCoy
Mayor Pro Tem Dixie Spehar
Commissioner Murray Nelson
Commissioner George Neugent
Commissioner Nora Williams

yes
yes
absent
yes
yes



Attest: DANNY L. KOLHAGE, Clerk

By

[Signature]
Deputy Clerk

jdresShrimpRoad

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By

[Signature]
Mayor/Chairperson

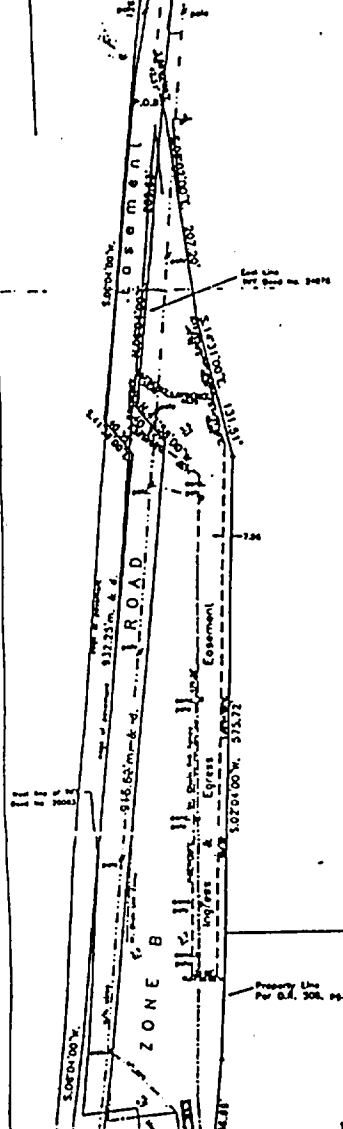
APPROVED AS TO FORM
AND LEGAL SUFFICIENCY.

BY *[Signature]*
SUZANNE A. HUTTON

DATE 1/31/02

FILED FOR RECORD
2002 FEB 26 PM 4:13
DANNY L. KOLHAGE
CLK. CIR. CT.
MONROE COUNTY, FLA.

FIFTH AVENUE (50' R/W)
FIFTH STREET



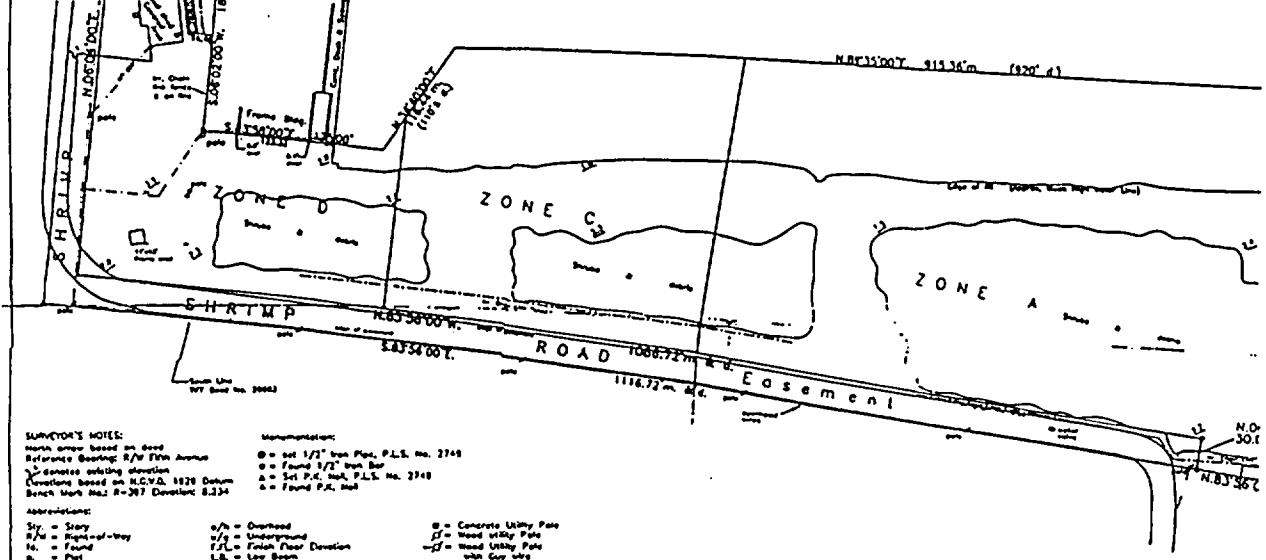
LEGAL DESCRIPTION

A tract of land and submerged lands in Slack Island, Monroe County, Florida and being more particularly described as follows: Commencing at the intersection of the Eastern Right-of-Way Line of Fifth Street and the Southern Right-of-Way Line of Fifth Avenue, of the plat of Slack Island, as recorded in Plat Book 1, page 55, of the Public Records of Monroe County, Florida; the S 87°34' E along the said Southern Line of Fifth Avenue for 405.00 feet; thence S 87°47' W for a distance of 338.86 feet; thence S 89° 00' E for a distance of 42.33 feet to the Eastern Line of a 30 foot easement and the Point of Beginning; thence S 08°07'00" E, a distance of 207.30 feet; thence S 14°31'00" E, a distance of 131.51 feet; thence S 07° 04'00" E, a distance of 578.77 feet; thence S 06°02'00" W, a distance of 194.00 feet; thence S 87°34'00" E, a distance of 175.00 feet; thence N 83° 40'00" E, a distance of 116.44 feet; thence N 87°35'00" E, a distance of 913.38 feet; thence S 87°12'41" W, a distance of 364.14 feet; thence N 87° 54'00" E, a distance of 163.00 feet; thence N 08°04'00" E, a distance of 30.00 feet; thence N 87°34'00" E, and along the Northern Line of a 30 foot easement a distance of 1084.72 feet; thence N 08°04'00" E, and along the Eastern Line of a 30 foot easement a distance of 913.64 feet; thence N 41° 30'00" E, and continuing along the Northern Line of a 30 foot easement a distance of 40.35 feet; thence N 08°04'00" E, and along the Eastern Line of a 30 foot easement a distance of 290.33 feet to the Point of Beginning.

Parcel containing 430719 square feet or 9.84 acres, more or less.

LEGAL DESCRIPTION (Swamp Road)

A parcel of land in Slack Island, Monroe County, Florida and being described as follows: Commencing at the Northwest corner of Block 57 of McDonald's Plat of a part of Slack Island, as recorded in Plat Book 1 of Page 55 of the Public Records of Monroe County, Florida; and run thence South 83 degrees 54 minutes East along the North boundary line of said Block 57 for a distance of 470 feet to the Point of Beginning of the parcel of land being described; thence run South 6 degrees 04 minutes West for a distance of 1283.01 feet; thence run South 41 degrees 56 minutes East for a distance of 40.35 feet to the Southwest corner of Trif Deed No. 24078 and the West boundary line of Trif Deed No. 20083; thence run South 8 degrees 04 minutes West along the West boundary of said Trif Deed No. 20083 for a distance of 932.21 feet to the Southwest corner of said Trif Deed No. 20083; thence run South 43 degrees 34 minutes East along the South boundary line of said Trif Deed No. 20083; the South boundary line of Trif Deed No. 19637 and the North boundary line of Trif Deed No. 20783 for a distance of 1118.72 feet; thence run North 6 degrees 04 minutes East for a distance of 30 feet; thence run North 83 degrees 56 minutes West for a distance of 1084.72 feet; thence run North 6 degrees 04 minutes East for a distance of 913.64 feet; thence run North 41 degrees 30 minutes West for a distance of 40.35 feet to the West boundary line of said Trif Deed No. 20083 and the East boundary line of said Trif Deed No. 24078; thence run North 6 degrees 04 minutes East along the West boundary line of said Trif Deed No. 20083 and the East boundary line of said Trif Deed No. 24078, for a distance of 1268.85 feet to the North boundary line of the said Block 57; thence run North 83 degrees 56 minutes West along the North boundary line of the said Block 57 for a distance of 30 feet to the Point of Beginning.



SURVEYOR'S NOTES:
North arrow based on deed
Reference Bearing: R/W Fifth Avenue
X denotes existing elevation
Contours based on H.C.T.D. 1828 Datum
Bench Mark No. R-207 Elevation: 8.234

Monumentation:
● = set 1/2" iron Pin, P.L.S. No. 2748
○ = Found 1/2" Iron Pin
▲ = Set P.C. Mark, P.L.S. No. 2748
▲ = Found P.C. Mark

- Abbreviations:**
- Sr. = Survey
 - R/W = Right-of-Way
 - Fe. = Found
 - P. = Plat
 - M. = Measured
 - O.D. = Official Deed
 - Sec. = Section
 - Twp. = Township
 - Rgt. = Range
 - N.T.S. = Not to Scale
 - C. = Containing
 - S. = Section
 - O/H = Overhead
 - U/G = Underground
 - F.P.D. = Faint Plat Deviation
 - L.B. = Low Beam
 - Red. = Packed
 - Ir. = Irregular
 - Conc. = concrete
 - I.P. = Iron Pipe
 - L.B. = Iron Bar
 - B. = Baseline
 - C.C. = Concrete Block
 - C.B.S. = Concrete Block Structure
 - C.C. = Covered
 - P.I. = Point of Intersection
 - C.U.P. = Concrete Utility Pole
 - W.U.P. = Wood Utility Pole
 - W.U.P. with Guy Wire
 - W.U.P. Fire Wall
 - W.U.P. Monitoring Well
 - W.U.P. Water Meter
 - W.U.P. Water Valve
 - W.U.P. Electric Meter
 - W.U.P. Electric Utility Valve
 - W.U.P. Iron Pipe
 - W.U.P. Sanitary
 - W.U.P. Storm Water Catch Basin
 - W.U.P. Iron